



UNITED STATES DISTRICT COURT
 NORTHERN for the NEW YORK

Michele Gray, M G: (minor)

Plaintiff(s),

-vs-

Amazon, Giokfine

Defendant(s).

CASE NO.

COMPLAINT

1:20-cv-715
 MAD/DJS

COMPLAINT

During the Covid-19 pandemic the local market were out of stock of tissue (toilet) paper so the Plaintiff purchase tissue (toilet) paper online on March 20, 2020 from the Defendant (see attached receipt **exhibit 1**) The tissue paper was delivered April 23, 2020, (see **exhibit 2**). The Plaintiff rushed to Urgent Care the Troy Family Health Center (St. Peters Health Partner) at 79 Vandenburg Place Troy, New York 12180 on June 23, 2010 by MD Melissa Fiorini (see attached **exhibit 3**), a prescription from "MD Fiorini" for treatment (see **exhibit 4**) the doctor checks the Plaintiff's urine test and discovered the Plaintiff has an infection in the

1 Plaintiff's private area. The Plaintiff has a lump on
2 the foreskin on the anal area that caused the Plaintiff
3 to rush for care. Prior to the visit to doctor the
4 Plaintiff was itching in the anal area for several
5 weeks. The Plaintiff called the Defendant for the
6 address of the company "Giokfine" due to the "Covid-19
7 pandemic" no phones called are being answered, the
8 Plaintiff sent email to the company asking for the
9 address with no response (see attached **exhibit 5**).
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11
12

13 The Defendant states online that they are "committed to
14 providing each customer the highest standard of
15 customer service" The Plaintiff is unable to contact
16 the company and "Amazon" hasn't answered the Plaintiff
17 online as well. Furthermore, the defendant has very low
18 consumer satisfaction status showing 75% of the
19 customer aren't satisfied, with overall company and an
20 89% negative review, (see **exhibit 6**)
21
22
23

24 The Plaintiff claim Tort under the "*Third*
25 *Restatement of Torts*" the influential treatise on the
26 law of "*product liability*". A manufacturing defect
27 occurred "the product departs from its intended design
28

1 even though all possible care was exercised in the
2 preparation and marketing of the product.

3
4 " *Product liability*" refers to a manufacturer or
5 seller being held liable for placing a defective
6 product into the hands of a consumer. Responsibility
7 for a product defect that causes injury lies with all
8 sellers of the product
9
10

11
12 Under *Product Liability, Negligence; Breach of*
13 *Contract* (warranties involving the product's quality or
14 fitness for use: express warranty, implied warranty of
15 merchantability, and implied warranty of fitness for a
16 particular purpose). These and other warranties are
17 codified in the "*Uniform Commercial Code (UCC)*", which
18 every state has adopted, at least in part) *and Strict*
19 *Liability*, it is the responsibility of Defendants to
20 deliver products free of defects that harm someone and
21 to make good on that responsibility if the products are
22 defective. The key feature of "*product liability law*"
23 is that a person/Plaintiffs who suffers harm isn't
24 attempted to prove negligence, but the negligence is
25 presumed which result is "*strict liability*". The
26
27
28

1 Defendant is absolute responsibility as the seller,
2 or/and distributor, and manufacturer, see *DeWayne*
3 *Johnson v. Monsanto Company, et al, (N.D. Cal. 2016)*
4

5
6 The law has developed a doctrine known as "*strict*
7 *liability*," that allows a person injured by a defective
8 or unexpectedly dangerous product to recover
9 compensation from the maker or seller of the product,
10 without showing that the manufacturer or seller was
11 actually "*negligent*". For these reasons (1) the
12 consumer cannot be expected to prove whether the seller
13 or renter of a product had a proper system for checking
14 for manufacturer's defects, or whether the seller
15 caused the defect after receiving the product from the
16 manufacturer. (2) a consumer can't be expected to check
17 each product before using it to see if it's defective
18 or dangerous.
19
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21

22
23 The Plaintiff claim for "*Strict Liability*" as
24 applied to *Tort Law*, "*Third Restatement of Torts*" and
25 *Amazon as a seller under "Second Restatement of Torts"*.
26
27 In tort law, in the area of torts known as *products*
28 *liability*, as *strict products liability* which the

1 defendant holds responsibility caused injury to the
2 Plaintiffs, See *Brown v. Superior Court*, 44 Cal. 3d
3 1049, 1056-57 (1988).
4

5 The suffer "emotional distress" of "Mental Anguish"
6 such as fright, terror, apprehension, nervousness,
7 anxiety, worry, humiliation, mortification, feeling of
8 lost dignity, embarrassment, grief, and shock,
9
10

11
12 Under the Tort law, Title 28 U.S. Code § 2671 -
13 Damages in tort claims to protects people from harms
14 which result from the wrongful conduct of others, to
15 property, and/also emotional or psychological harm as a
16 distinct form of injury. This recognition was a result
17 of a historical development, as society increasingly
18 understood the severity and the long-lasting
19 consequences of mental injury, (June 25, 1948, Ch. 646,
20 62 Stat. 982.
21
22

23
24 Title 15 U.S. Code § 6611(b) (5). Damages in tort
25 claims is an under this traditional common law,
26 Plaintiffs could sue for damages due to emotional
27 distress for mental harms as recoverable of torts, as
28

1 an additional harm if they also suffered physical
2 injury or the threat of physical injury. Eventually,
3 the courts recognized the infliction of psychological
4 injury as its own independent cause of action, even
5 without any accompanying harm to a person or property,
6 *W. Page Keeton et al., Prosser & Keeton on the Law of*
7 *Torts* § 12, at 57 (5th ed. 1984), (Pub. L. 106-37,
8 § 12, July 20, 1999, 113 Stat. 199.)
9
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11

12 In the case, *Erie Insurance Co. v. Amazon.com*, No.
13 18-1198 (4th Cir. 2019) The court explained that
14 insofar as liability in Maryland for defective products
15 falls on "sellers" and manufacturers (who are also
16 sellers), it is imposed on owners of personal property
17 who transfer title to purchasers of that property for a
18 price. The "*Fourth Circuit*" also held that, although
19 Amazon was not immune from suit under the
20 *Communications Decency Act*, 47 U.S.C. 230 (c) (1), (June
21 19, 1934, Ch. 652, title II, § 230, as added Pub. L.
22 104-104, title V, § 509, Feb. 8, 1996, 110 Stat. 137.
23
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1 In the case "*Oberdorf vs Amazon*" the plaintiff
2 became permanently blind by a defective retractable
3 leash. The plaintiff appealed her case and it was
4 brought before the "*Third Circuit*". A surprising 2-1
5 decision in July, a three-judge panel said "*Amazon*" was
6 liable as a seller of products sold by third-party
7 vendors, further state, The "*Third Circuit*" vacated and
8 remanded, *Amazon* is a "seller" under section 402A of
9 the "*Second Restatement of Torts*", Argued October 3,
10 2018 "and Opinion filed: July 3, 2019, *Oberdorf v.*
11 *Amazon.com Inc, No. 18-1041 (3d Cir. 2019).*
12
13
14
15

16 Judge Kevin McNulty federal district court in New
17 Jersey referenced "*Oberdorf*" in a case where a boy was
18 injured by a scooter brought on "*Amazon*" in 2015, the
19 judge wrote, "*Amazon's* control of the product, its
20 relationship with
21
22 the third-party sellers, and the structure of the
23 "*Amazon*" marketplace all weigh in favor of finding that
24 "*Amazon*" was a seller, not a mere broker or
25
26 facilitator".
27
28

1 Prior to the "Oberdorf" case Amazon felt sort to
2 come to realization liability is coming when "Amazon"
3 settled a case in 2014 where a 23-year-old Missouri man
4 died after his helmet came off in a motorcycle accident
5 purchased on "Amazon", for \$5,000, but admitted no
6 liability.
7

8
9 The Plaintiff mention "Amazon" didn't response with
10 the "third-party seller" Giokfine's address, "Amazon"
11 has a responsible to contact the consumer with basic
12 information regarding their "third-party seller" and/or
13 disassociate with companies that fall below a
14 percentage of consumer review
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19 Plaintiffs Defend Complaint
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21 Under FRAP 27(b) that this court may act on a motion
22 for a procedural on dispositive order- in this case,
23 authorize its clerk to act on specified types of
24 procedural motions. A party adversely affected by the
25 courts, or the clerk's, action may file a motion to
26 reconsider, vacate, or modify that action, a motion
27 requesting that relief must be filed.
28

1
2 The *U.S. Supreme Court* had defined when federal
3 judges can dismiss as "*frivolous*" certain lawsuits
4 brought by convicts and others who cannot afford to pay
5 normal court costs. The court, in a 7-2 ruling, said
6 it is largely up to a federal judge to determine when a
7 lawsuit is legally frivolous and thus need not be
8 litigated.
9

10
11 The ruling reversed a decision of the *Ninth Circuit*
12 *Court of Appeals*, which had said a federal judge could
13 dismiss a lawsuit against the government as frivolous
14 only if the allegations "*conflicted with judicially*
15 *noticeable facts.*"
16

17
18 The *Ninth Circuit* said, in effect, a judge could
19 invoke the frivolous standard only if he had factual
20 evidence that an allegation could not be true. The
21 judges in this case can't prove the Plaintiffs
22 complaint isn't true.
23
24

25 "A court is not bound, as it usually is when
26 making a determination based solely on the pleadings,
27 to accept without question the truth of the plaintiff's
28

1 allegations," justice Sandra O'Connor wrote for the
2 court. While on this first glance, charges "must be
3 weighted in favor of the plaintiff," judges are left
4 largely to their common sense in deciding whether to
5 dismiss a case, the court said. But O'Connor wrote such
6 a complaint cannot be dismissed "simply because the
7 court finds the plaintiff's allegations unlikely,"
8 noting the "age-old insight that many allegations might
9 be 'strange, but true.'"
10
11

12
13 The ruling further defined the court's 1989
14 *Neitzke v. Williams* ruling. The issue was important to
15 prisoners because they often cannot afford the normal
16 court filing fees. In a one-paragraph dissent, Justice
17 John Paul Stevens, joined by Justice Harry Blackmun,
18 wrote that while he agreed with the court's standard
19 announced in this opinion, it is "entirely consistent"
20 with the *Ninth Circuit's* ruling and Hernandez should be
21 allowed to pursue his case. See *Denton v. Hernandez*,
22 ____ S.Ct. ____ (1992).
23
24
25
26

27 The Constitution's Fifth Amendment adamantly
28 commands that no person may be "deprived of life,

1 liberty or property without due process of law" by any
2 act of the federal government and legal proceedings
3 carried out regularly and in accordance with
4 established rules and principles called *procedural due*
5 *process*. A basic threshold issue respecting whether due
6 process is satisfied is whether the government conduct
7 being examined is a part of a criminal or civil
8 proceeding, see *Medina v. California* 505 U.S. 437, 443
9 (1992), and having to litigant with full benefit of
10 fair trial and the law applicable to all those in like
11 condition, and not deprived of property without due
12 process of law, even if regarded as deprived of
13 property by an adverse result, see *Marchant v.*
14 *Pennsylvania R.R.*, 153 U.S. 380, 386 (1894).

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18
19 Under the Federal Regulation 5 CFR § 732.301 regarding
20 due process on decision made unfavorable decision, 5
21 CFR § 732.301(b) comply with all applicable
22 administrative due process requirements, as provided by
23 law, rule, or regulation, 5 CFR § 732.301(c (1) reason
24 for decision, 5 CFR § 732.301(c (2 opportunity to
25 respond, 5 CFR § 732.301(c (3) notice if appeal rights,
26
27 5 CFR § 732.301 (d) consider, all available information
28

1 in reaching its final decision, 5 CFR § 732.301(e) keep
2 record of action, [56 FR 18654, Apr. 23, 1991, as
3 amended at 66 FR 66711, Dec. 27, 2001]

4
5
6 *Carlton Fields v. Director of CDCR, et al vs U.S.*
7 *District Court for Eastern California, Sacramento on*
8 *04/09/2020* case reversed determined that Plaintiffs
9 case wasn't frivolous and unable to state a claim
10 dismissed
11

12
13 U.S Supreme court has stated under *Rule 12 (b) (6)*: "The
14 issue is not whether a plaintiff will ultimately
15 prevail but whether the claimant is entitled to offer
16 evidence in support of the claim only appear to be the
17 case but not definite" 416 US.232,236,236 (1974).

18
19 Rather, "a complaint should not be dismissed for
20 failure to state a claim: *Conley v. Gibson*, 355 U.S.
21 41, 45-46 (1975). "Dismissal without leave to amend is
22 improper as if, no amendment can save the complaint"

23
24 Wright and Miller, *Federal Practice and Procedure*, vol
25 5A 1357.
26
27
28

Relief

The Plaintiff seeking redress through tort law of "Product Liability" under "Strict Liability, Negligence and Breach of Contract", under the Tort Law, section 402A of the "Second Restatement of Torts and "Third Restatement of Torts"; Title. 28 U.S. Code § 2671 and Title 15 U.S. Code § 6611(b) (5) for "Mental Anguish" asking for damages in the form of monetary compensation of \$950.000 damages and punitive damages in addition to compensatory damages to deter further misconduct in amount of \$350.000. Total relief 1.3 million dollars include compensation and punitive damages. I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).

Dated June 27, 2020

EXHIBIT1

amazon.com

Final Details for Order #111-1856071-9717030

[Print this page for your records.](#)

Order Placed: March 20, 2020
 Amazon.com order number: 111-1856071-9717030
 Order Total: \$15.01

Shipped on March 24, 2020

| Items Ordered | Price |
|---|---------|
| 1 of: <i>giokfine 10 Roll White Toilet Paper Toilet Roll Tissue Roll Pack of 10 4Ply Paper Towels Tissue</i> Sold by: <i>giokfine (seller profile)</i> Condition: New | \$10.00 |

Shipping Address:
 Makai Gray
 165A VANDENBURGH PL A
 TROY, NY 12180-6048
 United States

Shipping Speed:
 Standard Shipping

Payment information

Payment Method:
 Visa | Last digits: 2013

Billing address
 Michele Gray
 25 West 132nd Street #8E
 New York, N.Y. 10037
 United States

| | |
|--------------------------------|----------------|
| Item(s) Subtotal: | \$10.00 |
| Shipping & Handling: | \$3.90 |
| | ----- |
| Total before tax: | \$13.90 |
| Estimated tax to be collected: | \$1.11 |
| | ----- |
| Grand Total: | \$15.01 |

Credit Card transactions Visa ending in 2013: March 24, 2020: \$15.01

To view the status of your order, return to [Order Summary](#).

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EXHIBIT 2

All ▾

Q
Hello, makai
Account & Lists ▾
Returns & Orders
Prime ▾
Cart

Deliver to Makai Troy 12180
Whole Foods
Prime Video
Customer Service
Pantry
Browsing History ▾
New Releases
Explore the Hobby Shop

Your Account ▾
Your Orders ▾
Order Details

Order Details

Ordered on March 20, 2020 Order# 111-1856071-9717030 [View or Print invoice](#)

| | | |
|--|---|---|
| Shipping Address Makai Gray 165A VANDENBURGH PL A TROY, NY 12180-6048 United States | Payment Method VISA **** 2013 | Order Summary Item(s) Subtotal: \$10.00 Shipping & Handling: \$3.90 Total before tax: \$13.90 Estimated tax to be collected: \$1.11 Grand Total: \$15.01 See tax and seller information |
|--|---|---|

▾ Transactions

Delivered Apr 23, 2020

giokfine 10 Roll White Toilet Paper Toilet Roll Tissue Roll Pack of 10 4Ply Paper Towels Tissue
 Sold by: giokfine
 \$10.00
 Condition: New

[Return or replace items](#)
[Problem with order](#)
[Share gift receipt](#)
[Write a product review](#)
[Archive order](#)

EXHIBIT 3

Olin Callaghan
Physician Assistant

Troy Family Health Center

Operated by Samaritan Hospital

79 Vandenburg Avenue
Troy, NY 12180

TEL 518.271.0063

FAX 518.271.0298



**ST PETER'S HEALTH
PARTNERS**

sphpma.com

EXHIBIT 4

RITE AID-82 VANDENBURGH AVE
83 VANDENBURGH AVE
TROY, NY 12180-6024

(518) 272-1355
Store DEA : BR5272579
RPH : FQ1

Rx 10687 0595206
GRAY, MICHELE

Date Filled : 06/23/2020

165A VANDENBURGH PL
TROY, NY 12180

(929) 318-5589

CEFDINIR 300 MG CAPSULE

NDC : 16714-0391-02 QTY : 10

DAW : 0
DAYS SUPPLY : 5

FIORINI, MELISSA M MD
79 VANDENBURGH AVE
TROY, NY 12180

NO REFILLS LEFT

ADVANCEPCS MED D CVS/CRMARK (BIN#004336

GRP: 788257

CLM REF#: 201754469307198999

U&C:

\$59.99

PHARMACY

EXHIBIT 5

5:10 PM Tue Jun 23

amazon.com

64%

SELLER
giokfine
[View Seller Profile](#)



PRODUCT
giokfine 10 Roll White
Toilet Paper Toilet Roll
Tissue Roll Pack of 10 4Ply
Paper Towels Tissue

ORDER PLACED
March 20, 2020
ORDER NUMBER
[111-1856071-9717030](#)
EXPECTED BY
May 1, 2020 - May
22, 2020

Other issue

[Change](#)

What would you like to do?

☒ Contact seller

Other issue ▾

Contact the seller and allow the seller two days to get back to you

3985 characters remaining

EXHIBIT 5A

Deliver to Makai
Troy 12180

Whole Foods Prime Video Customer Service Pantry Browsing History ▾ New Releases [Shop The Big Style Sale](#)

Your Account › Your Orders › [Problem with order](#)

Problem with order

SELLER
giokfine
[View Seller Profile](#)



PRODUCT
giokfine 10 Roll White
Toilet Paper Toilet Roll
Tissue Roll Pack of 10 4Ply
Paper Towels Tissue

ORDER PLACED
March 20, 2020
ORDER NUMBER
[111-1856071-9717030](#)
EXPECTED BY
May 1, 2020 - May
22, 2020

✓ **Message sent**

If the seller does not resolve your issue within 48 hours of the first message, you can revisit this page to check if you are eligible to request an A-to-z Guarantee refund.

giokfine

giokfine storefront

★★★★☆ 22% positive in the last 12 months (401 ratings)

giokfine is committed to providing each customer with the highest standard of customer service.

Have a question for giokfine?

Ask a
question

Feedback

Returns & Refunds

Shipping

Policies

Help

Products



"Satisfied"

By Nancy on June 19, 2020.



"This was ordered March 17th. I received an email June 16th simply stating it had been shipped, no tracking, no estimated arrival. No communication between March..."

[Read more](#)

By kalibeans on June 17, 2020.



"Horrible. Dishonest. Terrible quality. Watch for this seller on any"

| | 30 days | 90 days | 12 months | Lifetime |
|----------|------------|------------|--------------|----------|
| Positive | 8% | 9% | 22% | 24% |
| Neutral | 3% | 3% | 3% | 4% |
| Negative | 89% | 89% | 74% | 73% |
| Count | 38 | 305 | 401 | 408 |

17

EXHIBIT 6

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

SIGNATURE

Michele Gray, Mi G
{minor}
165A Vandenburg Place
Troy, New York 12180